TAM QUAM:

OR

AN ATTAINT

Brought in the *Supream* Court of the **King of Kings**; upon the *Statutes*, Exod. 20. 7, 16. and Levit. 19. 12.

Against those Modern *Jurors* who have found any *Indictments* upon the *Statutes* of 23 *Eliz.* 29 *Eliz.* or 3 *Jacobi*, against *Protestants*, *for monthly Absence from Church, without any Confession of the Parties*, or *Oath of Witness against them*, or made any *Presentments of them*. Contrary to the *express Letter of their Oaths* taken in a *Court of Judgment*, the *course of the Law* of *England*, or any *right Reason*.

Wherein is discourſed; *Whether any Protestants be concerned in that part of those Laws?* the *contrary is proved*. As also whether a *Grand-Jury's finding an Indictment*, be any *Evidence to a Petit-Jury?* The absurdness, and most pernicious *Consequents* of which are detected, and the *Vengeance* of *God* also against *False-swearing* is declared.

By one who *Prosecutes*, as well for his *Sovereign Lord* the **King of Kings**, as for the *Lives*, *Liberties*, and *Properties* of all the Subjects of *England*.

Eccles. 5. 8. *If thou seest the Oppression of the Poor, and violent perverting of Judgment and Justice in a Province, marvel not at the matter; for he that is higher than the highest, regardeth; and there be an higher than they.*

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CHAP. I.

The Miſchief ariſing to the Nation from the loſs of the Religion of Oaths. The Nature of an Oath. The Religion of an Oath loſt, by prophane and common Swearing, more by falſe Swearing, eſpecially in Judgment, whether by Jurors or Witneſſes. The Vengeance of God declared againſt it. The Diſcourſe reſtrained to the Oaths of Jurors, and more eſpecially thoſe Oaths upon which they bring in Preſentments, and find Indictments againſt Proteſtants upon the Statutes 23 Eliz. 29 Eliz. *and* 3 Jacobi.

1. AMongſt other *melancholick Conſiderations* relating to the Nation, which at this time *affect* the Souls of thinking Men, who believe *there is a God that judgeth the Earth*, there is none more ſad, or juſtly *afflictive*, than the Conſideration how much we have loſt the *Religion of an Oath*, and by that means broken the *Ligament of Humane Society*, and upon the point *invalidated the Inſtitution of God for the end of all Strife*: For according to the preſent uſe of *Oaths* they will be the end of *no Strife*, or at leaſt but a *legal end*; while no Man's Mind can acquieſce in an *Aſſertion* or *Promiſe* confirmed by it. For how is it poſſible that the Mind of any ſhould acquieſce upon the *Oaths* of others, when he diſcerns how many there are that make no Conſcience of *ſwearing* what is *falſe*, or what is *impoſſible they ſhould know to be true?* Nor is there a greater Evidence of the ſtupid *Atheiſm* of a multitude of Perſons:

For, how can any think that thoſe believe there is a *God*, ſo *omniſcient*, *juſt*, and *potent*, as the *Supream Being* muſt be, who dare call him to be a *Witneſs* that they *ſpeak Truth*, or that *they will do this or that thing*, and *challenge* him to be their Judg in caſe they do it not, and deſire that He, and his holy Goſpel may do them no good if they do it not; and by and by dare to ſpeak what they either *know to be falſe*, or *do not know to be true?* It is not poſſible that Men indeed ſhould believe *there is a God*, and do any ſuch things. Every *falſe Swearer* muſt either declare himſelf to be *ignorant* of what he doth when he taketh an *Oath*, or to be an *Atheiſt*.

2. It being more charitable to judg ſuch perſons *ignorant*, than to determine them abſolute *Atheiſts*. Charity will oblige every good Man to inſtruct his *Relations* or *Neighbours* in this great Point. All *Divines* agree that the nature of an Oath lies in the *calling of God to witneſs*, either to the truth of a Man's Aſſertion, or the Sincerity of his Heart as to his *Promiſe*, and his *faithfulneſs* in the *performance* of what he *promiſeth*. It was God's Ordinance, *Deut.* 6. 13. *Thou ſhalt fear the Lord thy God, and ſerve him, and ſhalt Swear by his Name.* Repeated again, *Deut.* 12. 20. *To him thou ſhalt cleave, and Swear by his Name.* Iſa. 65. 16. *He that ſweareth in the Earth ſhall ſwear by the God of Truth.* Jer. 12. 16. *And it ſhall come to paſs if they will diligently learn my ways, and ſwear by my Name, The Lord liveth.* The Scriptures are full of Reproofs and Threatnings of and againſt any other *Swearing*, by *thoſe that are no Gods*; Jer. 5. 7. Joſh. 23. 7. Exod. 23. 13. Nor indeed is it reaſonable, that any other than the *living God* ſhould be invoked in *Swearing*, who elſe can know the correſpondency of our Hearts and Actions, or the ſincerity of our Intentions? Who elſe hath a power (in multitudes of caſes hidden from Men) to puniſh him who *ſweareth falſely?* So as an Oath by any other, than by the *living God*, is no *ſecurity* to our Neighbour. Hence all *ſwearing*

ing by any Creatures is *prophane Swearing*, and not only a *violation of a Divine Command*, but alſo of the very *nature* and *end of an Oath*, giving no *ſecurity* to the Perſon, for whoſe *ſecurity* of our Truth it is taken. Indeed it is no better than *Idolatry*, if Idolatry be a *worſhiping of that for God which is no God:* For Swearing is a *Worſhip*, tho indeed a leſs ordinary piece of the Worſhip of God than *Prayer* and *Praiſe* are.

3. An *Oath* being ſo grave a thing as a *Divine Inſtitution*. The *Name of God being in it*, and a *ſolemn Invocation* of him, to witneſs our Truth, *eſſential* to it, and the end of its *Inſtitution* being to *determine Strife*, and to give our Neighbour the higheſt Security imaginable of our *Truth* and *Faithfulneſs*. Common *Reaſon* will inſtruct Mankind, that it ought not to be uſed *lightly* and *raſhly:* for, beſides that ſuch uſe of an *Oath* tendeth to make it uſeleſs to its end; it is alſo an high *prophanation of the holy and dreadful Name of the Lord our God*. Which of us would not judg himſelf affronted, to have our Neighbours make uſe of any of our Names upon every *light* and *trivial* occaſion? or to be called on to *witneſs* every ſilly and impertinent diſcourſe, or piece of Mens common Talk? Nor can that thing be any *ſecurity* to my Neighbour in any *weighty Concern*, which I lay to pawn at every *Alehouſe*, and expoſe at every *Stall*, much leſs that which hath proved to be no *ſecurity* a thouſand times, but made uſe of to ſeal a Lie. Beſides that ſuch common uſe of the *Name of God*, takes away all the *Aw* and *Reverence* of it; and who ſo thinks that any Man will make more Conſcience of an *Oath* in a *Judicial Teſtimony*, for, or againſt his Neighbour, than he doth in his *common diſcourſe*, muſt at leaſt think that the perſon who doth it, hath more *Charity* towards Men, than *Piety* towards God, (which is very unreaſonable, conſidering that all *Charity* is the Daughter of *Piety*) or elſe he muſt have ſome *odd thoughts of God*, imagining him more

more *ſevere* in revenging a *Wrong done to Man*, than in the *Vindication of his own Glory*, whoſe Name is invoked as much in idle and *common Swearing*, as in a *Judicial Teſtimony*; and who is as much called to Witneſs, and whoſe Power is as much challenged to revenge a Falſhood in the one as the other caſe. So that the many Precepts of God againſt common and ordinary Swearing in *light* and *trivial matters*, Exod. 20. 7. Deut. 5. 11. Mat. 5. 34. Jam. 5. 12. Levit. 19. 12. are but conſonant to the *common Reaſon of Mankind*. And indeed the *Judicial Swearing* of a common Swearer in all his light and ordinary diſcourſe, will from hence appear to a deliberate Man but a very *doubtful and ſuſpicious Evidence*. For why ſhould I think the Man ſpeaks Truth any more, when in a Court he ſaith, *So help me God, and his holy Goſpel*; than when in a Tavern, Alehouſe or Market he ſaith, *God damn me* it is ſo, or *I will do ſuch or ſuch a thing* when I know *it is not ſo*, and am *a witneſs to his not doing of it* after ſuch Imprecations; ſo as in truth there could not be a *juſter Law* than to make *common Swearers legally infamous*; which might probably reduce Mens *Tongues* to a better *decorum*, and recover amongſt us the *Religion of an Oath*, upon the upholding the *Religion* of which depend all our *Lives* and *Properties*.

4. A *falſe ſwearing by the Name of the moſt high God*, (eſpecially in Judgment) will eaſily from hence appear to be one of the *higheſt Crimes*, and *daring pieces of Impudence*, that a mortal Man can be guilty of. A *Guilt* incurr'd, not only when *the thing* we confirm by our Oaths *is falſe*, but when *we do not know it to be true*. And in *promiſary Oaths*, when we do not do the thing which we have ſworn to do. *Thou ſhalt ſwear the Lord liveth, in Truth, in Righteouſneſs, and in Judgment*; Jer. 4. 2. This is the Law of God concerning an Oath; I muſt not call *God to witneſs* that *a thing is true*, and *diſclaim any hopes in him*, or *deſire of help from him, or the Word of Salvation* if it be not true, if *the thing be falſe*; or unleſs

unleſs I *know it to be true:* for I cannot ſay a thing is true, which doth not ſo appear to me. Nor muſt I call God to *witneſs* that I will *do ſuch or ſuch a thing*; and *diſclaim any hopes, or deſire of any benefit from him, or the Word of Salvation*, if I do it not, and then not do it. Under the *Levitical Law*, (Lev. 5. 4.) God indeed appointed a *Treſpaſs-Offering* for him that had *ſworn to do Evil, or to do Good, if it were hid from him*, confeſſing that *he had ſinned in that thing*; but in that *Confeſſion* was required in the caſe, and not *Confeſſion* only, but a *Sacrifice*, the Sin of thoſe who *ſwear falſly* (tho ignorantly) is evident enough; and in that we read of no *Sacrifice* appointed for thoſe that *ſwear falſly*, knowing thereof when they ſware, we may be aſſured that was a Guilt God did not expect from any of his People; or at leaſt, which he would not eaſily forgive, or *purge by Sacrifice*. And indeed what puniſhment can we ſuppoſe too great for that perſon, who ſhall dare to *call God to Witneſs that he ſpeaketh Truth, when he knows it is a Lie*, or *doth not know that what he ſaith is true*? Or, *who dares to diſclaim all Benefit from God, or the Word of his Grace*, if he doth not *do this or that, and then doth it not*? His Blood is upon his own head, if God ſtrikes this Man dead in the place; if he immediately throws him into the Bottomleſs-Pit, and concludes him under his Wrath to all Eternity, he doth but deal with him according to his own Prayer and Deſire. He hath asked no further Grace, Mercy or Favour from God than according to the Truth of his Heart and Actions in ſuch or ſuch a thing wherein he hath wilfully ſuffered his Truth to fail; and that it may be not only in the higheſt contempt, and defiance of God, but may be to the no ſmall hurt and prejudice of his Neighbour, (tho that be much the lighter thing in the Caſe): for what can the Intereſt of a Man be conſidered with that of the Lord's Name and Glory? Out of his own mouth he is condemned; he hath ſpoken words againſt his own life. Whoſoever he be

that

that ſolemnly calleth God to be his Witneſs, *That in ſuch or ſuch a thing he ſpeaketh the Truth*, and *that he ſhall or will do a thing in ſuch a manner*, and *diſclaimeth all Help or Salvation from God if he doth it not*; and in the ſame matter, after ſuch a *ſolemn Invocation* of the Divine Name, and bold Challenge of the Divine Power, ſhall dare to affirm what he cannot ſay *is Truth*, or to do the quite contrary to what he hath promiſed with ſuch an Imprecation; what doth he do leſs than ſay, I value not what the Almighty God can do unto me; I deſie his Power, and deny his *Being* and Omniſciency?

5. Theſe things conſidered, we need not wonder at *Jeremiah*'s telling us (*Jer.* 23. 10.) *That becauſe of Swearing the Land mourneth*; nor yet at the Prophet *Hoſea* telling the Iſraelites from the Lord, *That the Lord had a Controverſie with the Inhabitants of the Land; becauſe there was no Truth, nor Mercy, nor Knowledge of God in the Land. By* [*Swearing*], *and Lying, and Killing, and Stealing, and committing Adultery, they break out, and Blood toucheth Blood.* Nor at the Prophet *Zecheriah*'s flying Roll, (*Zech.* 5.) *twenty Cubits long, and ten Cubits broad*, which v. 3. is expounded to be *the Curſe that goeth over the face of the whole Earth; for every one that ſtealeth ſhall be cut off on this ſide according to it: and every one that* [*ſweareth*] *ſhall be cut off on that ſide, according to it. I will bring it forth, ſaith the Lord God of Hoſts, and it ſhall enter into the houſe of the Thief, and into the houſe of him that* [*ſweareth falſly*] *by my Name; and it ſhall remain in the midſt of his houſe, and ſhall conſume it, with the Timber thereof, and the Stones thereof.* Nor ſhall we need wonder if we ſee this Curſe entering into many houſes in this Nation, and remaining in them, until it hath conſumed the Timber thereof, and the Stones thereof. For *ſwearing falſly* is no leſs than a *prophaning the Name of the Lord our God.* *Levit.* 19. 12. a taking of his *Name in vain*, who hath ſaid, *He will not hold*

him

him guiltleſs who taketh his Name in vain. And God hath ſaid, *I will come near unto you in Judgment, and I will be a ſwift Witneſs againſt the Sorcerers, and againſt the Adulterers, and againſt the falſe Swearers*, Mal. 3. 5.

6. It is true, the Law of *England* makes a diſtinction betwixt *falſe-ſwearing*, or *forſwearing* and Perjury, and will not allow *forſwearing* to be Perjury, puniſhable by the *Statute-Law*, unleſs it be *malicious*, and in a Caſe betwixt *Party* and *Party*. The Law of God maketh no ſuch diſtinction; *falſe-ſwearing* is the Crime which the Divine Law denounceth the *Judgment of God againſt:* And he that readeth my Lord *Cook*'s Chapter of *Perjury* in his *Pleas of the Crown*, will find, that according to the old Law of *England*, though one ſware what was Truth, but not what he *could know to be true*, was not puniſhable in other Courts, yet he was puniſhable in the *Star-Chamber*, of which he gives us an Inſtance in that Chapter: And without doubt ſo it ought to be, for I cannot truly ſwear that Thing to be, or to have been done, which I do not know is, or hath been done. In *Palmer*'s Reports, is an Inſtance of one indicted and puniſhed for ſwearing a Thing ſo, and ſo, (which indeed was ſo) becauſe he did not know it to be ſo. *Guide to Juries*, p. 33.

7. It is not my deſign to diſcourſe this Theme in the latitude, but only ſo far as concerneth *Jurors* in the *Courts* of *Aſſizes* and *Seſſions*, and that only with reſpect to *Criminal Caſes*. Our Law was not ſo confident of twelve or 24 Men in a *Grand Jury*, or a *Petit-Jury*, but that it hath provided againſt *falſe-ſwearing* in them, by *two Acts* of *Attaint:* by the one, 11 *Hen.*7.21. proviſion is only made for *the City of London*; by the other, for the whole Nation, 23 *Hen.*8. 3. Which *Statute* alloweth, the Perſon wronged by an *untrue Verdict*, to bring an *Attaint* againſt the Perſons giving ſuch *Verdict*, if it amounted to the value of

forty Pounds, and recover of every one of them *twenty Pounds*, *ten* for the King, *ten* for himself; but this must be only in Cases *betwixt Party and Party*. It seemeth a defect in our Law, that if the *King* be a Party, the *Jury* shall not be attainted; for every one will apprehend it very unreasonable, that *Jurors* should be *attainted*, and their *Verdicts* again be examined by 24 Men in an *Attaint*, where the Subject is a loser *forty Pounds or upwards*; and that they should be liable to no punishment for an untrue *Verdict*, where the Dammage amounteth to much more. I remember in a *parallel Case* of *Perjury in a Witness*, where the Law determineth no Indictment on the Statute shall lie, because the Statute is restrained to Oaths between Party and Party, My Lord *Cook* determineth, that though no Indictment upon the Stat. 5 *Eliz.* will lie in the Case, yet an Indictment shall lie at *Common Law*; and that hath been often experienced; and that *great Oracle of the Law* gives an unanswerable Reason for it, *Because it is not reasonable that* the *King's Name*, *(who is the Fountain of Justice)* should *patronize Injustice*. Whether an *Attaint* at the *Common Law* doth not lie against *Jurors* bringing in *false Verdicts*, (which indeed is nonsense) though they find for the *King*, deserves the study of *Lawyers*. Sure I am, my Lord *Cook*, in his Chapter of *Perjury*, gives us an account, That by the old Law of *England*, *Jurors* bringing in untrue *Verdicts*, were most severely punish'd, *by Imprisonment*, *seisure of all their Estates*, *turning out their Wives and Children*, *pulling down their Houses*, and *being made infamous*, their *Oaths never more to be admitted in any Court*. This Law is surely not so extinguished, but some *punishment* yet remains for all such Persons, if once we could hit upon the *Methods* that shall bring them to it.

8. But my business is only to shew them, that there lies an *Attaint* against them in the *Court of Heaven*, the punishment

ment of which is, not only *the eternal damnation of their Souls*, according to their own desire in the *Oath* they take, but the *Curse of God entring into their Houses, and abiding in them until it hath consumed the Timber thereof, and the Stones thereof.* Nor shall I meddle with all their *Verdicts*, only such as they have brought in against *dissenting Protestants*, upon the Statutes 23 *Eliz.* and 29 *Eliz.* and 3 *Jacobi.* This is the only Point I design to put in Issue, being assured, That if the Conviction of these Men upon those Statutes, prove to be upon their *false-swearing*, it hath in it all the *aggravations* almost imaginable, being done in a *Court of Justice*, and issuing in the *ruin* of so many thousand Persons, and Families. Hoping also that if it so proves, those who have urged, instructed, and taught them so to do, will reflect upon themselves in time, and consider whether they are not like to come under our Saviour's Censure, of being *the least in the Kingdom of God*, for *teaching* (if not forcing) ignorant Souls to break the Commandment of God, and that in Matters, where his *Glory*, as well as the Good of their Neighbours, are most eminently concerned.

CHAP. II.

The Forms of the Oaths administred to Grand-Jurors, Petit-Jurors and Witnesses, at the Assizes or General Quarter-Sessions. The Presentments of Grand-Juries upon the aforesaid Statutes; with the Form of the Indictments found, either by them or Petit-Juries. Their Method in proceeding. Grand-Jurors by their Oath, can present nothing, but what they know to be Truth, either of their own Knowledg, or the Oaths of credible Persons, but they must be forsworn. Petit-Jurors are forsworn, if they find without Evidence. The Law no where casts the Proof upon the Party accused, but in this Case directs other Evidence expresly. Grand-Juries finding an Indictment, no Evidence to the Petit-Jury of the Truth of it, proved by six Arguments. The pernicious Consequents of the allowing them to be Evidence as a Grand-Jury. It confounds Accusers and Evidence in some Cases; Judges and Evidence in other Cases. The Law allows it in no Case. Nor can Petit-Jurors, without being forsworn, find an Indictment upon no other Evidence.

1. THis Issue cannot be better tried, than *by an enquiry into the Oaths taken by all Jury-Men*, and then into the *Indictment upon these Statutes*; and *lastly, into the Evidence brought before them of the Fact.*

The Oath which every Person of *Grand-Juries* takes, is in this Form.

You shall diligently inquire, and true Presentment make, of all such Things and Matters as shall be given you in Charge,

Charge, or shall come to your knowledg concerning this present Service. The King's Counsel, and your Own, and your Fellows, you shall well and truly keep secret. You shall present nothing for Malice, Lucre, Ill-will; nor leave any thing unpresented, for Love, Favour, or Affection, Reward, or any hopes thereof: but in all things that concern this present Service, you shall present the Truth, the whole Truth, and nothing but the Truth. So help you God.

This every one of them promiseth, and testifieth his Promise, by kissing the Book of God. I desire it may be observed, that the *Oath* saith not, You shall *true Presentment make of such things* as you *think* or *suspect*, or *presume*, but that *shall come to your Knowledg*. You shall present *the Truth*, not your Fancies or Surmises, and what you have no knowledg of, either from your personal certain Knowledg, or by the *Oaths* of credible Persons, *and nothing but the Truth*; that is, what shall *come to your knowledg*, either by the *Oaths of credible Persons*, or *from your own sight*, or *observation*; for nothing else can appear to a Grand-Jury-Man as Truth in Judgment.

Every Member of a *Petit-Jury* takes this *Oath*.

You shall well and truly try, and true deliverance make, between our Sovereign Lord the King, and the Prisoner, [or Person] at the Bar, according to your Evidence. So help you God.

The Witnesses swear, They will speak the Truth, the whole Truth, and nothing but the Truth, &c.

Every

Every *Jury-Man*, and Witneſs, in teſtimony of his taking that Promiſory Oath, *kiſſeth the Book*; thereby only teſtifying, that he calleth *God to Witneſs*, that *he will do that thing which is propounded to him*, without Malice or Favour; and *deſiring God, that he may receive no Mercy from him, nor benefit from his Goſpel, if he doth otherwiſe.*

2. The Grand-Jury's Preſentment, according to theſe Statutes, muſt be, *That ſuch a Perſon, for the ſpace of one or more Months, being of the Age of ſixteen Years and upward, did not repair to ſome Church, Chappel, or uſual place of Common-Prayer, but did forbear the ſame, having no lawful Let nor Impediment, contrary to the Statute made in the firſt Year of her Majeſty's Reign.* They commonly run in a ſhorter Form; but they declare to the *Clerk* of the *Aſſizes* or *Seſſions*, that they deſire they might be drawn up according to Form. Which is done by him, nothing *material* being omitted in the Form mentioned, nor added thereunto. This is found by the *Grand-Jury* at the next *Aſſizes* or *Seſſions*, and being found by them, is without alteration tranſmitted to the *Petit-Jury*, and by them found, or rejected, without any alteration.

3. I grant it poſſible, that there are ſeveral caſes, wherein *Jury-Men* may find ſuch an *Inditement* without *falſe ſwearing*. Admit they know that ſuch a Perſon were all thoſe days, *in his own Houſe, or in ſome Neighbours Houſes*, at an *Ale-Houſe*, or at an *Unlawful Meeting*, or walking idly in the Fields, *&c.* Or that any ſuch thing be ſworn before them, they may undoubtedly, yea and by their Oath are obliged to preſent him, or indict him: But if they know no ſuch thing from their *own ſight or obſervation*, nor from the *Oath* of Perſons whom they judg credible; That they who have called *God to Witneſs*, that they will preſent *the Truth*, and *nothing but the Truth*, that is *come to their Knowledg*, may preſent any upon that Statute, or upon their Oaths

Oaths aver the *Truth* of any ſuch Indictment, is what no Learned and Sober *Divine* in the World dare aſſert. Never yet did any Divine aſſert, that it was no *forſwearing* a Man's ſelf for him to *affirm upon Oath*, what *he did not know*, either from his own ſight, or obſervation, or the credible Teſtimony of others aſſerting it upon their Oaths, (for no *Jury* ought to hear or regard any other Information). How impoſſible it is that any *Grand-Jury-Man* ſhould know that A. B. was *neither at his Pariſh-Church, nor any other, any Sunday, or Holy-Day, for one or more Months*, unleſs he knew that all ſuch Days he was at another place, is obvious to the meaneſt Underſtanding. If he doth not know it, he *ſweareth falſly*, in preſenting the Perſon for it upon that *Oath* which he hath taken to preſent *the Truth*, and *nothing but the Truth*. What he knoweth not, can be to him *no Truth*, much leſs can it be a thing *come to his Knowledg*. And I am ſure it is *nothing given him in charge*. None ever in his Wits, yet ſaid, that a thing which one only *preſumes*, *ſuſpects*, or *thinks*, is *come to his Knowledg*, or what he can aver to be Truth.

4. It is true, ſometimes *Grand-Juries*, only offer *Conſtables Preſentments upon their Oaths*, in which caſe much is to be ſaid in the Excuſe of *Grand-Juries*. It is then come to their knowledg, upon the *Oaths* of thoſe whom the Law judgeth credible Perſons; but ſuch Preſentmens uſe not to be of *Perſons* for *not coming to their Pariſh-Church, nor any other*, they only can ſpeak for *their Pariſh-Church*. Nor can any *Grand-Jury* bring in any ſuch Preſentments, but for abſence from their *Pariſh-Church*. If they add, *nor to any other*, they make the *Act their* own; or if it be added by any other who draws ſuch Indictment into Form, the next Grand-Jury cannot, without *falſe-ſwearing*, *find it*, unleſs they *perſonally know it*, or it be made good to them by one or more credible Oaths. If they do, they notoriouſly violate

late the *Oath* they have taken, to preſent *nothing but the Truth, and what cometh to their Knowledg*; whatſoever is added to the firſt Preſentment, can be ſaid in no ſenſe to come to their *Knowledg*, if they do not know it *perſonally*, without *new Oaths* to confirm it.

5. Theſe things conſidered, it will poſe the ſubtilleſt Divines in the World to excuſe Perſons ſerving upon *Grand-Juries*, from *falſe-ſwearing*, in theſe *Preſentments* or *Indictments*, who do not *perſonally* know the thing to be true which they preſent, or at leaſt know it from the *Oaths of others* taken before them: of whom alſo it is their Duty, according to their Oath, *diligently to enquire* upon what grounds they ſwear ſuch a thing, before they can true Preſentment make. Theſe things are ſo obvious, that it may juſtly amaze any underſtanding Perſon that any ſhould have any other apprehenſions. Nor certainly is it poſſible they ſhould, if Mens *common Learning* in their ordinary Diſcourſe had not baniſhed out of the World all *fear* and *Religion of an Oath.*

6. For the *Petit-Jury*, they ſwear to make a *true Deliverance according to their Evidence.* So as the Truth or Falſhood of their Oath dependeth upon the *Evidence* they have. It will poſe any Perſon to think what Evidence twelve Men can have, that another for all the *Sundays* and *Holy-days* in a *Month, or more, hath not been at ſome Church or Chappel where Divine Service hath been, and having no lawful Let or Impediment.* This every Member of a *Petit-Jury*, who findeth any Indictments of this Nature, doth, and muſt affirm, or there could be no *Conviction.* And he affirmeth it, after *his ſolemn calling God to Witneſs*, that in this caſe, he will *affirm Truth*, and that *according to his Evidence.* What Evidence is it poſſible ſuch a Jury ſhould have, but *Confeſſion of the Party*, or the *Oath* of ſome Perſon who hath been with him all thoſe days in other Places,

any

any reasonable Person may judg; and we shall see anon, that in this very Case of Absence from Church, the Law of *England* alloweth no other *Proof*. And every *Petit-Jury-Man*, doth affirm this to be Truth upon no less than his Salvation, and desireth that the God of Mercy, and his Holy Gospel may *so help him*, as he hath acted truly, not according to his Suspicions, Fears, or Belief, but according to his *Evidence* in saying, he is *Guilty*. Hath not (think we) the *Clerk* of the Court reason to part with these Juries after such *Verdicts*, with the same Prayer or Complement, that he doth sometime part with condemned Prisoners with, —*and the Lord have Mercy upon your Souls?* For not one Indictment of many hundreds of this nature, are found upon any such *Evidence*, or indeed upon any *Evidence* at all, which is either such in its own Nature, or according to the Law of *England* in all other Cases, as also in this very Case.

7. Proofs ought to be *clear*, and *perspicuous*, saith my *Lord Cook*; and it is impossible any thing should be an Evidence, which doth not make the Thing clear and *evident*. Indeed none that useth to speak Sense, will call any thing less, *Evidence*. Now what is there can be imagined in Nature to make a *matter of Fact evident* to *others*, but either the *confession of the Party*, or the *Oath of Witness*, or the *personal knowledg of the Truth of it to the Persons to whom it is so to be made evident?* Those that serve upon *Grand-Juries*, may, according to their Oaths, look upon the last, as an Evidence for them sufficient to present upon; that a *Petit-Jury* may, I never heard affirm'd: none of them can be *Witnesses*, because they are *Judges* in the *Matter of Fact*. The Law of *England* indeed alloweth another *conviction* in this Case, *viz. In case a Person presented, indicted, and proclaimed, doth not appear in Person at the next Sessions or Assizes, and put himself upon his Traverse*. The Reason is, *because the Law takes such a Person to confess the Fact*. And it

may be this is righteous enough, provided that ſuch perſons have *Summons* to appear, truly ſerved upon them. But if they have not, *it is the higheſt Unrighteouſneſs* imaginable: For though the Law ſuppoſeth all his *Majeſties* Subjects to be preſent at *Aſſizes* and *Seſſions*, yet every one knows how impoſſible a thing it is that all *Men* and *Women* above ſixteen years of age ſhould ſo appear, and know what is done: Upon which account our Law ordereth *Summons* of the *Party* upon every *Preſentment*; and if the Party be not *ſummoned* to proceed againſt him, can be no Righteouſneſs; for *our Law condemneth none* before the *Executioners* of it *have heard him ſpeak*, or at leaſt given him an opportunity, that if it be not his own fault, they may hear him ſpeak for himſelf. Yet multitudes are thus Preſented, and Convicted, and great portions of their Eſtates ſeized, who never ſo much as knew they were Preſented or Accuſed, till the *Sheriff* and *Bayliffs* come and make a Seiſure of their Eſtates, which certainly is in the *Officers* an *Iniquity to be puniſhed by the Judge*, and an *Act of Unrighteouſneſs* from which every one ought to be relieved: for tho the perſon's not appearing if he be ſummoned and *proclaimed*, and hath notice of ſuch *Proclamation*, may be a ground of a Righteous Conviction; yet if he hath no ſuch Summons, or notice of ſuch Proclamation, no ſuch Conviction can be righteous. For it is the condemning a Perſon, before they have heard him ſpeak, or given him a liberty to ſpeak for himſelf, a thing abhorred by the Heathens, who had no more than the Light of Nature to guide them in the things which they ought to do, and avoid. But this is a digreſſion from my Argument.

8. There are ſome ſo abſurd in this caſe as to affirm *there needeth no Evidence; it is a thing which cannot be proved. And if the Perſon preſented and indicted, cannot prove that within the time for which he is ſo preſented and endicted, he was at ſome Church or Chappel, and that during the time, and the whole time*

of

of Common Prayer, or had ſome lawful impediment, the Petit-Jury ought to find ſuch Indictment. The Abſurdities of this Aſſertion are ſo many, that it is not eaſie to number all of them; I will hint at ſome few.

(1.) If the Oath adminiſtred to the Petit-Jury were, *You ſhall well and truly try, and true deliverance make betwixt our Sovereign Lord the King, and the Perſon at the Bar, without any Evidence.* Though it would be a ſtrange Oath for any to adminiſter, or take, yet it might excuſe the *Petit-Jury* from the infamous crime of *falſe ſwearing*, though they found ſuch Indictments. But their Oath being to find *according to their Evidence*, it is impoſſible to excuſe them, finding without *any Evidence*: for none ever called *Silence*, *Evidence*, nor yet the *extorted Confeſſion* of the Party. The *Law of England* requireth no Man to ſpeak any thing to accuſe himſelf, nor to prove himſelf guiltleſs, unleſs ſome Attempts have been firſt made to prove him guilty, which he can diſprove.

(2.) Again, This Aſſertion *obligeth every Subject of England to have Witneſſes ready to prove he was at Church, at leaſt one time within every* 28 *days throughout the year*: if not, he may, it ſeems, be Preſented, Indicted, and ought to be found guilty. The Statute gives twelve months time to proſecute upon theſe Statutes; Suppoſe perſons preſented and indicted, for abſence the firſt 28 days in that year: how many thouſand of innocent perſons may not be able to bring Proof of their preſence at Church after eleven months, any one day within that month?

(3.) *There is no ſuch Proceeding allowed in any other Criminal Cauſe.* Is the Man indicted for Robbery, or Murder, bound to prove he was at another place, & in another company, at that time when the Murder or Robbery was done, before it be firſt proved to the Jury *upon Oath*, that he was at that time in that place where ſuch a fact was committed? I cannot underſtand but by *theſe Mens Law* the very ſame

Perſons found guilty of this Crime, may, when they pleaſe be found guilty of *Murder*, *robbing by the High Way*, or any other *Capital Crime*; if this be ſufficient Evidence to the *Petit-Jury*, that the Party accuſed having no Evidence againſt him, yet ſhall not acquit himſelf by proving the Place where he was at that Time, which after nine or ten Months, who is able to do? And theſe very *Jury-men*, who are ſo liberal of their Souls, as to find *without Evidence* in theſe Caſes, may one day, by God's righteous Retaliation, find themſelves thus dealt with.—*Nec Lex eſt juſtior ulla. Quàm necis artifices arte perire ſuâ.* To allow Perſons guilty of a Crime, without any other Evidence, but becauſe they will not, or perhaps cannot acquit themſelves by proving Circumſtances of Time and Place where they were, after 3, 5, 6, 10 Months time, (having no proſpect of ſuch an Accuſation) is a thing which may prove of moſt fatal Conſequence to every Mother's Child in the Nation.

(4.) Yet if the Law of *England* (which alloweth it in no other Caſe) did, *by any Clauſes* in it, allow this to be a *ſufficient Evidence*, in this ſomething might be ſaid. The Civil Power may be allowed, when themſelves create a Crime, to ſet down what ſhall be *Evidence of that Crime:* But doth any of the *Statutes*, made in this Caſe, ordain any ſuch thing? Either the Statute 23, or 29 *Eliz.* or that 3 *Jac.* Nay, the *Statute* determineth the quite contrary, and that for this *Crime* of not *coming to ſome Church.* And that where the Puniſhment cannot exceed 4 *s.* it ſaith,—*Upon proof made of ſuch default, by confeſſion of the Party, or Oath of Witneſs*, 3 Jacobi 4. Now will not the Law of *England*, in this Caſe, allow ſo little a ſum as 3 or 4 *s.* to be taken from any Subject, without either the accuſed Perſon's *confeſſion of his Fault*, or *Oath of Witneſs.* And ſhall any, pretending to *know* the *Law*, impoſe upon a *Jury* to believe? Or ſhall any reaſonable Man that can but read, be

be ever made to believe, that there need no Proof, no Confeſſion, but they muſt find the Indictment for 20 *l.* or it may be 200 *l.* (according to the number of the Months) eſpecially when the conſequence of their finding it will be, the Party's paying of 240 *l.* every Year after it, or loſing all his Goods, and two thirds of his real Eſtate, or lying in Priſon all his Life, unleſs the Party accuſed can prove himſelf Guiltleſs, and this after that ſuch Jury-Men have called God to Witneſs, they will give in their *Verdict* according *to their Evidence:* And the Law hath in this particular Crime made other *Evidence* neceſſary, and no where directed, or allowed any ſuch thing, as the accuſed Perſons not clearing himſelf for Evidence. Do ſuch *Jury-men* believe *there is a God*, or expect any thing from this God, or advantage from his Goſpel, when they have dared God to ſhew them no Mercy, if they do not do that, the quite contrary to which they do in an hours time? Will any Divine ſay theſe Men are not deſperately *forſworn?* Let any of them bring their Pleas, and let us ſee if they can ſpeak ſenſe in the Caſe; let them produce their Divines that dare juſtify this not to be *falſe-ſwearing*, and the moſt *abominable forſwearing*, to the *prejudice of their Brother*, as well as *the moſt impudent pollution* and *prophanation* of the moſt holy and dreadful Name of God; and what wickedneſs may be preſumed they will ſtartle at, who in ſuch a degree proclaim they have no *fear of God before their eyes*, nor any belief of the *Being*, *Power*, *Omniſcience*, *Truth*, or *Juſtice* of God in their Hearts.

9. But they will ſay, The *Petit-Jury hath Evidence: for the finding of the Indictment by the Grand-Jury, is ſufficient Evidence to the Petit-Jury.* This new Notion is ſo falſe in it ſelf, and of ſo dangerous Conſequence, as it perfectly ſubverteth the whole Law of *England* in *Criminal Cauſes*, and deſtroyeth one of the greateſt pieces of the *Engliſh Liberty.*

1. *It*

1. It is a fundamental Point in our Government, that unleſs it be by Parliament, *No Man's Life ſhall be touched, but by the Judgment of* 24 *Men*; twelve of which make the *Grand-Inqueſt*, and are the Jury to *inquire* of Facts, whereof any are accuſed; twelve make the *Petit-Jury* for *trial* of the Iſſue. None can, at Aſſizes or Seſſions for their Life, or any part of their Eſtate, be put upon trial before the *Grand-Inqueſt* hath found the *Indictment* to be a true Bill. So as it is impoſſible that the *Grand-Jury*, as a *Grand-Jury*, ſhould be any Evidence to the *Petit-Jury*; for they have no *Oath* of *Witneſſes* adminiſtred to them, they are only ſworn to *enquire*, and to make a *true Preſentment to the Court*. If any Perſons know any thing of their perſonal knowledg, they may leave their capacity of *Grand-Jury-Men*, and come down, and give their Oaths in Court before the *Petit-Jury*, and may be Witneſſes; but as a *Grand-Jury* they can be no *Evidence*, nor have they any Oath adminiſtred to them to that purpoſe, nor can the *Petit-Jury* propound any Queſtions to them, (a liberty allowed them as to all their *Evidence*): to make a *Grand-Jury*, Evidence, is to allow the Perſons to be *Judges* and *Witneſſes*; a thing never heard of in any juſt Court. The Work of Witneſſes is to prove a Fact; the Work of Judges, is to *determine*, according as the *proof* is made.

2. This were to make *Petit-Juries perfectly needleſs*, and of no uſe: for if the Grand-Juries finding an Indictment be Proof ſufficient, Reaſon will tell us, they are the fitteſt Men to *determine the Fact*, being ordinarily both a *greater number*, and Men of more *Reaſon* and *Underſtanding*, and of *better Quality* than thoſe who appear on *Petit-Juries*: And if *Petit-Juries* have no power to bring in *Not Guilty* as a *Verdict* upon *any Indictment* by them found, they are perfectly of no uſe at all. Thus this ſeems a new Art to deprive the Subjects of all Trials by Juries.

3. The

3. The *Grand-Juries* who find theſe Indictments, *find them of courſe, ordinarily*, without the leaſt proof of the truth of them, and know no more, than that a former *Grand-Jury* upon their Oaths made ſuch *Preſentments*, whether true or falſe, is ſtill left to a Proof before the *Petit-Jury*.

4. The *Indictments*, as they come to the *Petit-Jury*, have ordinarily more in them, than the Preſentments of the firſt *Grand-Jury* in the Caſe. The firſt *Grand-Jury*, either preſenteth upon ſome of their own *particular Knowledg* of the *Thing*, or upon ſome *Conſtable's Preſentment* brought into them: let it be the one or the other, they are only *for not coming to their Pariſh Church*. No Conſtables will upon their Oaths preſent more; nor can it be preſumed of any *Grand-Jury-Man*, becauſe it is impoſſible for them to know, that they neither came *to their own, nor to any other*. Theſe words, *Nor unto any other Church*, which are eſſential words to the Charge, upon the truth of which the heavy Penalty lieth, are put in by the *Clerks*, who draw up the *Indictments* in Form, and neither ſworn before, or to *one Grand-Jury* or *another*. So as of them there is not the *leaſt Evidence* to the *Petit-Jury*.

5. Nor is it reaſonable that the finding of an Indictment by a *Grand-Jury*, which is formed upon a *Preſentment* by a former *Grand-Jury*, ſhould be allowed as the *leaſt Evidence of the Truth of the Fact* contained in the ſaid *Indictment*; becauſe *Grand-Juries*, tho' by their *Oath* they are bound to *preſent the Truth*, and *nothing but the Truth*, and what is *given them in Charge*, and *ſhall come to their Knowledg*, yet (with what faithfulneſs to their *Oaths* deſerves their ſecond Thoughts, and may hereafter come to be examined) take upon them to preſent what *none of them doth know*, nor *can know*; nor is made, by the *Oaths* of any, to appear to them, but what they *ſuſpect*, or have heard from *others*, not upon Oath,

Oath, counting that a thing *comes to their knowledg*, tho they have catched it from the *tittle tattle of the Town*, or the mouths of any malicious Persons; not considering that they also swear to present *the Truth*, and *nothing but the Truth*, and have disclaimed all hopes of Salvation, if they do otherwise than according to such an Oath. Many of them have been so easily deluded, to invoke God's Vengeance upon themselves, as to think that they may do it upon a *common Fame*, and that not proved before them neither; nay more, that they may do it, though some of themselves know the contrary to such Presentment or Indictment; and put the Persons to 40*s.* *charge* at *Sessions*, or 7 or 8 *l.* charge at the Assizes to *clear themselves*; and very often it is proved that such Presentments are notoriously false. Now that a *Petit-Jury* should take such *Presentments*, or *Indictments*, for *Evidence*, is a thing so obviously contrary to Sense and Reason, as well as their Oath which they take, that nothing need be said against it.

6. *It is expresly contrary to the* Law *of* England, *in all other* Causes *Criminal, That the Presentments of Officers, who present* ex officio, *should go for Evidence:* Nor doth either the *Common*, or *Statute-Law of* England, direct it any where in this Case. This is to make the *Accusers*, Evidence, and to confound *Accusers* and *Witnesses*. Whereas, *Si satis sit accusari nullus erit innocens*; It was all our Fore-father's Opinion, that none could be innocent, if the Accusers might be allowed for *Evidence*. If the *Grand-Jury* do but deliver in the *Presentments*, or *Indictments* of others, they are in that case considered as *Judges* in the Matter of Fact, averring their *charitable belief* that such *Presentments* are true. If the *Presentment* ariseth *originally* from themselves, they are but the *Accusers*, and in that capacity can be no Evidence; to say that *Common Fame* is the Accuser in the Case, when that *Common Fame* is a mere aerial thing, suck'd in

in by ſome or other of the Grand-Jury, and not juſtified to the whole Body of the *Grand Jury*, *vivâ Voce*, is but to dignify a *Chimera*. There can be no *Common Fame*, without a *multitude* to report it; which I preſume *Grand-Juries* have not coming to them upon that Errand; and if they had, they muſt be ſworn in Court, before (by the Law of *England*) they can come near to make the *Common Fame*. In all ſuch Caſes therefore, to make a *Grand-Jury* an *Evidence* to the *Petit-Jury*, is to make *Accuſers*, *Evidence*, the Conſequents of which I leave to every Man of ſenſe.

7. If Malice did not out-law the Reaſon of *Jurors*, who find *Indictments* on no other Evidence than this, they would conſider, *Hodie mihi, cras tibi, What you make the Lot of others to day, may be yours to morrow.* A *Grand-Jury* may find againſt you an Indictment for *treaſonable words* you never ſpake, *Heretical Opinions or Speeches*, *Murder*, *Theft*, *Burglary*. In three or four of theſe Caſes it is very ordinary for *Grand-Juries* to find, upon *ſlighty Evidence*, becauſe *the Good of the Publick is concerned*. If the *Petit-Jury* need no other Evidence, every Subject's *Life*, *Liberty*, and *Property* is at the Mercy of every *Villain*. If any will ſay, that in ſuch Caſes there muſt be further *Evidence* brought to the *Petit-Jury*; I ask, Why? *Evidence* is *Evidence*, I hope in one Cauſe as well as in another, except the Statute-Law directs otherwiſe, which I am ſure it doth not. Beſides, that *Grand-Juries* often find Indictments (where the Publick Peace and Government is concerned) upon very ſlight *Evidence*, becauſe they know they cannot be convicted without other more *full* and *particular Evidence*. So that to allow their finding the Indictment for *Evidence* to found a Conviction upon, is the greateſt Unrighteouſneſs imaginable. Upon the Trial of my Lord *Shaftsbury*, my Lord Chief Juſtice told the *Grand-Jury*,

'That that which was referred to them to consider, was, 'Whether upon the Evidence should be given to them, there 'be any Reason or Ground for the King to call these Per-'sons to an account: if there be probable ground, it is as 'much as you are to enquire into. You are not to judg 'the Persons: but for the Honour of the King, and De-'cency of the Matter, it is not thought fit by the Law, that 'Persons should be accused and indicted, where there is no 'colour nor ground for it, where there is no kind of suspi-'cion of a Crime, nor reason to believe that the thing can 'be proved. It is not for the King's Honour to call Men to 'an account in such Cases; therefore you are to enquire 'Whether that that you hear, be any Cause or Reason for 'the King to put the Party to answer it. You do not con-'demn, nor is there such a strict enquiry to be made by 'you, as by others that are sworn to a Fact or Issue. A pro-'bable Cause, or some Ground, that the King hath to call 'those Persons to answer for it, is enough (*Gentlemen*) for 'you to find the *Bill*, it is as much as is by Law required.

From this great *Oracle* of *Law*, may easily be gathered;

1. *That any probable Ground or Reason that the King hath to question a Person for such a Fact, any kind of suspicion of the Crime, and that it may be proved, is enough for a Grand-Jury.* 2. *That the Grand-Juries Work is not to condemn, nor to make so strict an inquiry, as the Jury for Trial, who are sworn to a Fact, or Issue.* Add now to this, the common sayings of some little Country Lawyers at a *Sessions Cushion*. *That the Grand-Juries finding the Indictment* is *Evidence enough.* And affirming to Juries, *That this is* Law; and observe what follows.

Then a suspicion that a Man hath *stollen an* Horse, or a *probable* Ground that the King hath reason to question a Man for a *Murder*, without any strict inquiry into the thing, whether

whether it be ſo or no, is ground enough by Law for a *Petit-Jury* to find a Man guilty of the *Theft*, or of the *Murder*. But this was not my Lord Chief Juſtice his ſenſe, who tells us the *Jury for Trial, who are ſworn to a Fact or Iſſue, muſt make a ſtrict enquiry*, as to which he conceiveth a *Grand-Jury* not concerned; and therefore what they find is no *Evidence* to a *Petit-Jury*. But thoſe that find an Indictment upon no other *Evidence*, are apparently forſworn, bringing in their *Verdict* not according to their *Evidence*, but without any *Evidence*.

CHAP. III.

A ſhort Diſquiſition, whether the Statutes of 23 Eliz. 29 Eliz. *and* 3 Jacobi, *concern any Proteſtants. The Arguments for their concern in them propounded, and anſwered, and found too light to ballance three great Arguments to the contrary: which are propounded and enlarged upon.*

1. I Know it is Forreign to this Diſcourſe to debate the *Queſtion, Whether thoſe Statutes of* 23 Eliz. 29 Eliz. 3 Jac. *do in all the branches of them concern Proteſtants, or no*, particularly *in thoſe Branches which relate to coming to, or abſenting from Church?* Great Lawyers are divided in their Opinions as to it: thoſe who think they do, urge,

(1.) *The general words, every Perſon*, and the mention of *Recuſants* ſometimes, without the addition of *Popiſh*.

(2.) The *reference of thoſe Statutes* to the Stat. 1 *Eliz.* 2. in which they ſay *Proteſtants* as well as *Papiſts* are moſt certainly concerned.

(3.) The *Oath of Allegiance*, which is within the *Stat.* 3 *Jacobi*, and may be given to any *Proteſtants*.

None of which can be determined, *concludent*, in the Caſe, after the fore-going part of a Statute hath declared the Reaſons and Grounds for the making of that Law, *viz.* The bringing in of *Popiſh Bulls*, ſeducing People to the *Romiſh Religion*, and determined ſuch Perſons guilty of Treaſon, (Crimes which no Proteſtant can be guilty of) tho' it follows as a means to prevent theſe things, that *every Perſon* that for a Month ſhall *abſent himſelf from his Pariſh-Church, ſhall forfeit* 20 *l.* Yet certainly it is a fair Interpretation of it to reſtrain that general Term, to that *ſort of Perſons* which alone are mentioned in all the preceding part of the *Act*. Nor certainly in any juſt *conſtruction*, can *general words*, whether *Affirmative* or *Negative*, have more extent in *one Statute* than in another. In the late Act for *the Sabbath*, made for the keeping that Holy Day from prophanation; and an higher end cannot be, God having made it the 4*th Commandment* in the *Decalogue*, and denominated all *Religion* from it, *Iſa.* 56. 4. there is this clauſe,

'Provided alſo, That no Perſon or Perſons, upon the 'Lord's Day, ſhall ſerve, or execute, or cauſe to be ſerved 'or executed any Writ, Proceſs, Warrant, Order, Judg-'ment, or Decree, (except in Caſes of Treaſon, Felony, 'or breach of the Peace) but that the ſervice of every ſuch 'Writ, Proceſs, Warrant, Order, Judgment, or Decree, 'ſhall be void, to all intents and purpoſes whatſoever. And 'the Perſon or Perſons ſo ſerving, or executing the ſame, 'ſhall be as liable to the Suit of the Party grieved, and to 'anſwer Dammages to him for doing thereof, as if he or 'they had done the ſame without any Writ, Proceſs, War-'rant, Order, Judgment, or Decree.

Here are no leſs than three *general terms*; nor is there one Line in the Act excluding *Diſſenters* from the *benefit of this Act*, nor more authoriſing the Service of *Warrants* upon them for Meetings, than upon any others. It is true, the

Act

Act againſt Conventicles, gives a further liberty; but it hath always held a Rule in Law, *That latter Laws abrogate ſuch as were before, if contrary to them.* Neither doth this Act *abrogate* it further than concerneth the *Lord's Day*, (the better Sanctification of which, was the deſign of the Act). Beſides, *were not the former Laws which gave Liberty to Arreſt Men on any Days, abrogated by this Act, ſo far forth as concerned that Point?* Yet multitudes of *Juſtices* have ſo interpreted theſe general terms, that *Diſſenters* have no benefit by it in this point, *Warrants* are yet executed on them, and their Doors broken open by Warrants, on theſe days. So, as it ſeems, *general words* in Statutes, ſhall comprehend *diſſenting Proteſtants*, where they will ſerve to do them miſchief, but not where they may do them kindneſs. But this is a Queſtion not yet decided (that I have heard of) by my *Lords the Judges*, as having not come judicially before them and the *Juſtices*. And others who have adventured thus far to make *Blots*, may ſome of them live to ſee them hit. General words are certainly every where of equal extent.

2. Nor is the reference to the Statute of 1 *Eliz.* 2. a proof, that all concerned in that Statute, are alſo concerned in the Statute of 23 *Eliz.* for it is mentioned only as *directive of the manner how Perſons ſhould go to Church, and there behave themſelves:* How doth it from thence follow, that all who do not go, ſhould be puniſhed by a like Puniſhment, becauſe all are obliged to go to Church in the ſame Order, and to behave themſelves there in the ſame decent manner? Nor is the *third Argument* of more value, for there is nothing more ordinary than to find *heterogeneous* things in the ſame *Statute Law.* Nor will it follow, That the Penalties for *not coming to Church*, in the Statute 3 *Jacobi*, concern *Proteſtants*, becauſe the *Oath of Allegiance* in it doth, eſpecially when moſt Clauſes in that Act expreſs *Popiſh Recuſants*.

ſants. But the Clauſes concerning that *Oath*, expreſly mention *any Perſons 18 Years of Age, whether indicted or convicted of Recuſancy, or no.* But thoſe who make this Objection, ſhould alſo conſider that it is by the Act 7 *Jacobi* 6. that the Oath of Allegiance in 3 *Jac.* is given to Proteſtants, not by the Act. 3 *Jac.* 4.

3. The *Arguments* being no ſtronger for *Proteſtants Concernment* in thoſe Acts, let us ſee what can be ſaid to prove *they are not concerned in them.* I do not pretend to ſo good an acquaintance with Records: But if it doth appear, 1. that for *threeſcore Years after the making the Act* 23 *Eliz.* it was never put in *Execution* upon any but known and profeſſed *Popiſh Recuſants*, it is certain a greater Argument to prove that *Proteſtants* are not within it in any due Conſtructions, than any can bring to prove they are. 2. I am ſure, if *Proteſtants*, though *Diſſenters*, be *within thoſe Acts*, they are, *by the Statute Law of* England, in a far worſe caſe, and expoſed to much higher Penalties, for not *going to Church, and going to Meetings*, than profeſſed *Papiſts* are: for beſides they are in all points made equal with them, as to the Stat. 23 *Eliz.* 29 *Eliz.* and 3 *Jacobi*; They are further in danger of the Stat. 35 *Eliz.* (out of which Papiſts are in terms excepted); According to which *Statute*, *Proteſtants*, (and none but they) for theſe Crimes may be forced to *abjure the Realm*, or to *die like Felons.* I would gladly underſtand, from any Man of ſenſe, to what purpoſe the Parliament 35 *Eliz.* ſhould make ſo ſevere a Law againſt *Proteſtant Diſſenters*, upon that little *freak* (the effect of a melancholick Deliration only) of *Hacket*, *Coppinger*, and *Arthington*; if they had thought they had been included in the Acts of 23 *Eliz.* made but twelve Years before, or of 29 *Eliz.* made but ſix Years before? Was not the loſing 260 *l.* a Year, a ſufficient Puniſhment for any thing they had ſhewed themſelves guilty of? Or was it judged pu-

puniſhment enough for Papiſts; for the *Papiſts*, who had attempted to *poiſon*, *to ſtab the Queen*, to *invade her* by an *invincible Armado*, to raiſe up *Rebellion* in the Nation, and not enough for *Proteſtants?* Can we judg that any *Engliſh Parliament* in thoſe days could ſo judge? The Act of 23 *Eliz.* was made upon the Papiſts filling the Land with *Prieſts* and *Jeſuits* from the *Engliſh Seminaries* at *Doway*, *Rhemes*, and *Rome*; their *publiſhing of Books* to ſtir up *Rebellion in* England, *declaring that the Pope, and the King of* Spain, *had conſpired that* England *ſhould be made a Prey:* And the woful ſtir then made by thoſe active *Jeſuits*, *Campian* and *Parſons*. *Campian*, *Sherwin*, *Kerby*, and *Briant*, were taken the Year before, *Anno* 1581. This Act paſſed 1582. The 29 *Eliz.* was 1588, when we were invaded by the *King of* Spain's *invincible Armado*; and ſix Years before *Campian*, the *Head of that Faction*, had openly declared, that in caſe of ſuch an *Invaſion*, he would *take part with them againſt the Queen*. The Act 3 *Jacobi*, came forth upon the *Powder-Plot*. I appeal to any Man of ordinary ſenſe, whether he can think that the *Parliaments* of thoſe Times, ever intended to put *Proteſtants* into a far worſe condition than *Papiſts*, which they apparently are, if theſe Statutes equally concern them as well as Papiſts, and they then were liable to the Act 35 *Eliz.* out of which *Papiſts* are expreſly excepted.

4. Further yet; I do very well know that *Votes of Parliament* repeal no *Laws*, much leſs have the *force* of *Laws* in them, nor are to be mentioned in *legal Pleas:* But the *Queſtion* here is not, *whether theſe Acts be of force or no?* It is on all hands granted that they are; but *what* is the *true ſenſe and meaning of them?* And (as to that, under correction) I think a great deference is to be given to the *Parliaments* Judgment declared in them, the far greater part of all the graveſt and moſt famous Lawyers of *England* being

being generally in every *Convention, or Session of Parliament.* It was, as I remember, either in the latter end of the Year 1677, or the beginning of the Year 1678, that upon the *Petition* of the *Quakers*, the *Parliament* (at that time sitting) first took notice, That the Laws made principally against *Papists*, were executed *princially* upon *Protestants*, and appointed a *Committee*, who spent a great deal of time in examining the Returns of *Convictions* made upon those *Statutes* into the Office, and applied themselves to his *Majesty* for favour to his *Protestant Subjects* as to those Laws. About the middle of the Year 1678, the horrid *Popish Plot* was discovered; from *Michaelmas* that Year, till *Decemb.* 30. the *Parliament* had enough to do to search into the *Popish Plot*, and they had made but little *progress* in it when they were Prorogued, which was *Decemb.* 30. and soon after Dissolved. The next *Parliament* began *March* 6. $167\frac{8}{9}$, and sat until *May* 27. 1679. their whole time was also spent in a further *discovery of that Hellish Plot.* All this while I met with no Declarations of the *Parliament's* mind or sense in the case of those *Acts:* Nor (as I believe) were there any *complaints* of any *prosecutions* of *Protestant Dissenters*, upon any of those *Statutes.* The next *Parliament* began *Octob.* 21. and held unto *Jan.* 10. 1680. By this time the *Popish Party* had a little recovered their Courage, and began to *defame* the very Report of a *Popish Plot.* They had eight months before began to *sham* it, tho' with very ill success: But before this time they had began to divert the *prosecution* of it, by obtaining of their Friends (who would be thought *Protestants*) every where to prosecute *Dissenters* upon those Statutes. The *Parliament* that sat down *Octob.* 21. 1680. had intelligence of it. The Term before *Estreats* were given out upon all *Convictions* upon those Statutes; but with *express Instructions*, from the *Commissioners* of the *Treasury*, to leavy the *Forfeitures* upon *none but known Popish Recusants*, which

which 'tis likely that in many Counties the *Sheriffs* obſerved. In others 'tis certain they did not, but levied them equally, if not principally upon *Proteſtants*; but were inforced to refund ſome of them, and for a great while after this, upon a *Certificate* into the *Exchequer*, that the Perſons were *Proteſtants*, and had taken the *Teſt*, proceedings againſt them, by order out of the *Exchequer*, were ſtaid. This is ſuppoſed to have proceeded from his Majeſty's Goodneſs, complying with the deſires of his Parliament, in the Caſe of the *Quakers*. The *Houſe of Commons* which ſat in the *Weſtminſter Parliament*, *Octob.* 21. 1680. had ſat but a Month and two or three odd days, before they came to this *Vote*, without one Man's contradiction, in *Nov.* 1680.

'Reſolved, *nemine contradicente*, That it is the Opinion 'of this Houſe, that the *Acts of Parliament* made in the 'Reigns of Queen *Elizabeth*, and King *James*, againſt *Po*'*piſh Recuſants*, ought not to be extended to *Proteſtant* '*Diſſenters*.

Accordingly, they made their Application to his *Majeſty* by the Members of their Houſe, which were of his Majeſty's moſt *Honourable Privy Council*, beſeeching him, *That all the Proteſtant Diſſenters proſecuted upon thoſe Acts, might be diſcharged, without paying any Fees; and that he would recommend this Buſineſs to the Judges.* Upon the *26th* of *Novemb.* 1680. we find it thus in the *Votes*, under the Speaker's Hand.

'Mr. Secretary *Jenkins* acquainteth the Houſe, that his 'Majeſty had been attended by the Members of his moſt 'Honourable Privy Council, with an Addreſs concerning 'Proteſtant Diſſenters. And that his Majeſty's Anſwer is, 'That they ſhould be diſcharged, and that without Fees, as 'far as might be done according to Law, and they ſhall be 'recommended to the Judges.

The *Parliament* which then ſat, hath the repute to have been ſhort of none, who ever ſat within thoſe Walls, for Men of *Honour*, *Wiſdom*, and *Eſtates*.

Here was plainly their *Judgments* declared, That theſe Acts concern not, nor ought to be extended to *Proteſtant Diſſenters*. After which certainly that ſingle *Country Juſtice*, or Lawyer, who dareth to ſay *they do*, muſt arrogate much more to himſelf than he ought to do, conſidering how many of the greateſt Lawyers of *England* unanimouſly concurred in that *Vote*, which did not repeal thoſe Laws, nor ſtop or ſuperſede the execution of them, but only declared the ſenſe of them.

If any Perſon, after all this, will affirm, *they do concern them as well as others*, I have nothing more to ſay againſt it, but only wiſh, That the *Queſtion* might be determined by my *Lords* the *Judges*, and not left to the various *determinations* of puny *Lawyers*, and many *Juſtices of the Peace*, who were never bred to the *Studies*, nor exerciſed in the practice of our *Laws*. This whole Diſcourſe is but a Digreſſion from my proper Theme; for admit thoſe Statutes do concern *Proteſtants*, it is another Queſtion, Whether *Grand-Juries*, *finding ſuch Indictments*, *be Evidence to a Petit-Jury in the Caſe?* The *Affirmative part* of which I never look to find determined by *Judges*; what-ever be determined as to the other Queſtion.

CHAP.

CHAP. IV.

A Pathetical Concluſion to Jurors, to conſider what they have done, to repent, and to their Ability to make ſatisfaction, avoiding the like enormous practices for the future: And to ſuch as are Commiſſioners of the Peace, not to be any Temptation to them to bring ſuch Guilt upon themſelves, their Families and Country.

WHat can remain further, but that as an Orator for the Great God of Heaven and Earth, I ſhould admoniſh all my Country-men, who have been deluded by their own Luſts and Paſſions, or over-awed by any others, to make any ſuch *Preſentments* of things whereof they had no *knowledg*, or which *they could not do in Truth*, or to find any ſuch *Indictments* without any *Evidence*, and this after that in *Judgment* they had *called God to Witneſs*, that they would *preſent nothing but the Truth*, and *what came to their knowledg*, and *true Deliverance make according to their Evidence*. And after they had ſealed this their Promiſory Oath, by *diſclaiming any deſire of help, or Salvation, from God and his Goſpel, if they do preſent any thing but the Truth, that ſhould come to their knowledg*; or *find any otherwiſe than according to their Evidence*.

That they would every one make haſte, and bring their *Treſpaſs Offering to the Lord*, by a ſerious confeſſion of an *Iniquity*, than which hardly any is capable of higher *aggravation*, and make *ſatisfaction* to their Neighbours for the wrong they have done them by *forſwearing themſelves*, (in

which Caſe no Divines will ſay *Repentance* is true, without what *Satisfaction* we are able to give our Neighbours); upon their Souls will lie the *cries* of *Parents*, *Husbands*, Wives, and Children, impriſoned, or ruined and undone, by their going expreſly contrary to their *Oaths* in *Judgment*; and let them be aſſured, there is *Wrath* againſt them from the Lord; and if thoſe Texts, *Zech.* 5. 4. and *Mal.* 3. 5. be pieces of Holy Writ, *God will be a ſwift Witneſs againſt them*; and the *Curſe of God will enter into their Houſes, and abide there until it hath conſumed the Timber thereof, and the Stones thereof.* If therefore you believe *there is a God*, or that the *Scriptures are the Word of God*; If you believe that *both your Bodies and Souls are ſubject to the Power and Juſtice of God*, both *in this Life, and that which is to come*, ſhew it by *fearing* to *ſwear*, and not punctually doing according to what you have ſworn. There is no greater indication of *Atheiſts* than *ſwearing falſly*, or not performing punctually what they have ſworn. Nor is it poſſible that there ſhould be a more infamous Peſt of Humane Society. True Oaths in Judgment preſerve and uphold it; *falſe ſwearing* deſtroys it, and turneth it into an Herd of Beaſts: for it is not poſſible Juſtice ſhould be ſupported, where the *Religion of an Oath* is loſt. Whoſoever ſweareth falſly to the prejudice of his Neighbour, whether as a *Juror* or a *Witneſs*, is condemned in the Law of God; and though his Judgment may ſleep awhile, yet it is not probable it ſhould ſleep long, when demanded of the *Righteous Judg*, by the *importunate Cries* of ſo many as are oppreſſed by it.

2. And let it not be accounted *preſumption* in me, to beſeech ſuch worthy *Gentlemen* as his *Majeſty* hath thought fit to dignify with the *Commiſſion of the Peace*, to conſider what they do in Cauſes of this Nature. Thoſe Noble and Worthy *Gentlemen*, cannot but know that it is moſt notoriouſly *contrary to the Law of England*, for thoſe who are

Judges,

Judges, in any case to influence *Jurors*, or *Witnesses*; who being under *Oaths*, ought to be left free to the *true Observance* of them, and not urged either to what is *certainly*, or is in their opinion a *violation* of them. *Witnesses* ought not to be *instructed*; and to be so *instructed*, is enough, according to all just Laws in the World, *to invalidate their Testimony*. *Constables* in their *Presentments*, given in at *Assizes* and *Sessions*, are *Witnesses*, they are (generally) all the *Evidence Grand-Jurors* have, unless some *Informers* (which is very rare) swear such *Informations* or *Indictments* before them: Or some of their own Body know the Matter of Fact to be true, which as rarely happeneth. To *instruct* them, and much more to *threaten* and *fright* them into such *Presentments*, is the boldest violation of all Laws, both of *God* and *Men*, that is imaginable. *Judges* have no more to do, than to *declare the Law*, and to receive such *Presentments* of Facts contrary to it, as Persons upon Oath shall give freely, according to their Consciences. If Persons under *Oaths* to make Presentments, do not make them truly, they may be *legally* prosecuted for their *Concealments*; but to force them, being upon their *Oaths*, to make *Presentments*, which they profess they cannot do in Truth, is what is neither justifiable to God nor Men. That *Jurors* are not *finable* by *Judges* for their *Verdicts*, hath been resolved twice within these few Years; once by *Parliament*, in the Year 1677, in the Case of my *Lord Chief Justice Keeling*, who had fined a *Grand-Jury* in *Somersetshire*, for not finding an *Indictment* of *Murder*, for which they saw no Evidence. The *Parliament* judged, That the *Presidents and Practices of fining Juries, in, and for not giving their Verdicts*, is *Illegal*, and the *Chief Justice was then for it brought upon his Knees to the Bar of the House of Commons*. The other by the *Justices* of the *Common Pleas*, in *Brown Bushel's Case*, largely reported by my Lord Chief Justice *Vaughan*; and certainly they

they are no more to be over-awed and threatned, than to be fined. The Wiſe Man commandeth us, ſaying, *Prov.* 23. 10. *Remove not the old Land-mark, and enter not into the Fields of the Fatherleſs.* The *removing of old Land-marks in Judgment, and entring into the Fields of the Fatherleſs*, uſually follow the one the other; they are ſeldom or never removed, but in order to ſome notorious Oppreſſion: The Curſe of God therefore is againſt them that do it; *Deut.* 27. 17. Our Fore-fathers ſet theſe as *Land-marks*, for Publick *Juſtice*, That no Perſons in our Publick Courts of *Judicature ſhould be deprived of Life, Liberty, or Property, but by the Judgment of at leaſt* 24 *Perſons*; twelve or more to enquire whether there were any probably juſt ground, ſo much as to call in Queſtion ſuch a Perſon for ſuch a Crime, for which any ſuch Puniſhment ſhould be inflicted; other twelve, to try the thing in iſſue, according to ſuch Evidence as they ſhould have upon Oath given of it. *That neither the firſt nor ſecond of theſe Juries ſhould be awed, or threatned into their Verdict, nor fined for it, but left to their Conſciences upon their Oaths.* That *nothing ſhould be found againſt any but upon good and ſufficient Evidence of honeſt and legal Witneſſes.* If theſe ancient *Land-marks* be removed, we ſhall ſoon ſee *entring into the Fields of the Fatherleſs.*

3. I ſhall conclude with another ſaying of *Solomon*, Eccleſ. 10. 8. *He that diggeth a Pit, ſhall fall into it; and whoſo breaketh an Hedg, a Serpent ſhall bite him.* Thoſe that alter the juſt Order and Boundaries of Law, founded upon *Reaſon* and *Juſtice*, uſually pay for their Folly; cutting up a *Bridg*, which at one time or other *they* or their *Children* will want for themſelves to paſs over, for the avoiding of the hands of Violence and Oppreſſion. We ſhall obſerve that the Righteous God puniſheth no Sins ſo frequently by *Retaliation*, as thoſe which are againſt *Juſtice* and *Charity*, and therein

therein he infinitely commendeth his Love to *humane Society*, for the preſervation and upholding of it, againſt the brutiſh Paſſions of thoſe who will deny their own reaſon to diſturb it; and abjure their Manhood, to prove themſelves Creatures, meerly under the conduct of their *concupiſcible* or *irraſcible Appetite*; from which *ſottiſhneſs* let every good Man deliver himſelf.

FINIS.

There is lately publiſhed a uſeful Treatiſe for this preſent Juncture, Intituled, *The Caſe and Cure of Perſons Excommunicated, according to the preſent Law of* England. With ſome Friendly Advice to Perſons purſued in Inferior *Eccleſiaſtical Courts* by *Malicious Promoters*; both in order to their *avoiding Excommunication*, or *delivering* themſelves from *Priſons*, if impriſoned, *becauſe they have ſtood Excommunicated Fourty days.* With an account of their ſeveral Fees due in thoſe Courts. Sold by *Richard Janeway.*